Jurisdictional Statement

Office-Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

81-504

IN THE

Supreme Court of the United States

October Term, 1980

No. .....

JAMES L. PICKERING,
Petitioner-Appellant,

v.

CITY OF BUFFALO, NEW YORK,
Respondent-Appellee.

JURISDICTIONAL STATEMENT

JAMES L. PICKERING, *Pro Se*
Petitioner-Appellant
Hand Road
Chaffee, New York 14030

Questions Presented

1. May the District Court keep out of the record all evidence both Public Records and Private Records necessary for Petitioner to establish damages, including United States Tax Court decisions and records and 2nd Circuit Court of Appeals decisions and records, thereby denying a seated jury access to such facts as are necessary for its members to determine a question of fact placed before them in the constitutional exercise of their rights as jurors to determine facts and in constructive denial of Petitioners constitutional right to have his petition for trial by jury honored.

2. May the District Court after seating a jury, hearing the opening statements of Petitioner Pro Se and Counsel for Respondent approach petitioner in the absence of that jury and direct that Petitioners exhibits, required to be previously identified numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 15, 16, 17, 18, 19, 21, 22, 23 be kept out of the evidence presented to the jury when these exhibits were necessary to establish damages and then dismiss for failure to establish damages.

3. May the District Court exclude from the record the oral testimony of a licensed professional teacher of medical science subjects such as Biology explaining to the jury in laymans terms the technical language used in official records of surgical operations performed on Petitioner as best available witness on short notice when the Court itself advanced the trial date, thereby rendering the surgeon unavailable to establish pain.

4. May the District and or any other court set aside the mandate of the Constitution in the First Ammendment pertaining to the abridgement of petition rights it or they being so bound by Art. VI Sect. 3 of the United States Constitution itself.

INDEX

Page

Jurisdictional Statement 1

Opinions Below 2

Statement 3

The Question Is Substantial 5

Notice of Appeal to United States Supreme Court 6

Receipt for Certified Mail 7

Order, Judgment and Decree of the United States Court of Appeals, Second Circuit 8

Notice of Judgment Dated August 21, 1980 11

Identified Exhibit List 12

Judges List of Exclusions 14

CASES CITED

Gerhardt v. General Motors Corp., 581, F.2d 7, (2nd Cir. 1978)
Epoch Producing Corp. v. Killian Shows Inc., 522, F.2d, 737, 742-43; (2nd Cir. 1975)
Savard V. Marine Contracting Inc., 471, F. 2d, 536, 543 (2nd Cir. 1972)
United States V. One Motor Yacht Named Mercury; 527 F. 2d, 1112, 1113, (1st Cir. 1975)
Penn Central Transportation Co. v. New York City, 438, U.S. 104, 125 (1978) 9

STATUTE

Title 42 Subchapter 1, Section 1985, Par. 3 of the United States Code 2

CONSTITUTION

United States Constitution Page

Art. I 2

Art. V 2

Art. I Section 2 4

Art. I Section 10 9

Art. III Section 2 2

Art. IV Section 3 3

Art. VI Section 3 3,5

Art. XIV Section 1 2

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Supreme Court of the United States

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No. .....

JAMES L. PICKERING

Petitioner-Appellant,

v.

CITY OF BUFFALO, NEW YORK

Respondent-Appellee.

On Appeal from the Second Circuit
Court of Appeals

Jurisdictional Statement

Appellant / Petitioner appeals from the Court of Appeals for the Second Circuit on appeal from the District Court for the Western District of New York INFORMAL OPINION entered in the Court of Appeals on the 20th day of January, 1981 affirming dismissal for failure to prove damages. This Statement is submitted to show that the Supreme Court of the United States has Jurisdiction and that the question is substantial.

Opinion Below

The opinion of the Circuit Court is appended as page 8.

The opinion of the District Court is appended as page 10.

This suit was brought in the District Court under authority of Art. I Ammendments to Constitution of the United States & citing Title 42 Subchapter 1, Section 1985, Par. 3 of the United States Code.

Subsequent to 5B6384 City Court of Buffalo in which Petitioner was Defendant, Petitioner commenced action in Supreme Court of the State of New York but lost all appeals on the ground of failure to file "Notice of Claim" under General Municipal Law of the State of New York Par. 50e. Appellee in this action thereupon commenced a new action in City Court of Buffalo for the Collection of demolition charges under emergency conditions when it has a pre-existing contract for said demolition as conditional discharge under 5B6384 City Court of Buffalo. By this act Appellee opened the door for a new suit on cross complaint. Petitioner elected to petition United States District Court charging violations of the United States Constitution itself. In each of the ammended complaints and the original complaint Petitioner / Appellant cited violations of Art XIV Sect. 1 Ammendments and Art. V of the Constitution itself. The Jurisdiction of the United States Supreme Court is hereby invoked by authority of Art. I Ammendments to Constitution primarily and secondarily by Art. III Sect. 2 of the Constitution itself.

Judgement was entered in the District Court on Aug. 21, 1980 and affirmed by the Court of Appeals on Jan. 20, 1981. Art. I Ammendments to Constitution of the United States is sufficient statutory jurisdiction to sustain the petition in the United States Supreme Court.

Petitioner believes this case to be unique and is not conversant with other case law on the subject if such exists.

The question presented is:

1. May the District Court keep out of the record all evidence both Public Records and Private Records necessary for Petitioner to establish damages, including United States Tax Court decisions and records and 2nd Circuit Court of Appeals decisions and records, thereby denying a seated jury access to such facts as are necessary for its members to determine a question of fact placed before them in the constitutional exercise of their rights as jurors to determine facts and in constructive denial of Petitioners constitutional right to have his petition for trial by jury honored.

2. May the District Court after seating a jury, hearing the opening statements of Petitioner Pro Se and Counsel for Respondent approach petitioner in the absence of that jury and direct that Petitioners exhibits, required to be previously identified numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 15, 16, 17, 18, 19, 21, 22, 23 be kept out of the evidence presented to the jury when these exhibits were necessary to establish damages and then dismiss for failure to establish damages.

3. May the District Court exclude from the record the oral testimony of a licensed professional teacher of medical science subjects such as Biology explaining to the jury in laymans terms the technical language used in official records of surgical operations performed on Petitioner as best available witness on short notice when the Court itself advanced the trial date, thereby rendering the surgeon unavailable to establish pain.

4. May the District and or any other court set aside the mandate of the Constitution in the First Ammendment pertaining to the abridgement of petition rights it or they being so bound by Art. VI Sect. 3 of the United States Constitution itself.

Statement

Petitioner, a natural born citizen of the United States, of meager means appeared in District Court in the action under this heading PRO SE. The jury was seated and the opening statements of the parties completed.

The jury was recessed for the admission of new citizens of the United States by their taking of the oath. After the new citizens had cleared the courtroom and before the jury was brought back in, the Judge approached Petitioners table, went through Petitioners previously identified list of exhibits and directed that the previously listed exhibits be excluded. The previously identified exhibit list is appended as 11. The judges list of exclusions in his own hand is appended as exhibit 13. Subsequent to dismissal court reporter informed Petitioner that transcript would cost $600.00. In the absence of sufficient funds for the transcript and the necessary copies, Petitioner mounted his appeal without transcript as the bulk of the case was not in it anyhow. Similarly here funds are not yet available and not in the near future expected to be available for the transcript or the necessary copies much less for the services of professional counsel. Informal opinion was filed in Court of Appeals on Jan. 20, 1981. Court of Appeals erred in that the City Court case was not a condemnation proceeding but a criminal action for violation of a city ordinance thereby entitling Petitioner among other rights and remedies to trial by jury in the absence of a waiver, signed in open court in front of the judge, by Art. I, Sect. 2 of the Constitution of the State of New York, which he did NOT get. Appeals Court cited the lack of transcript explained herein. The Appeals Court cited in its decision cases involving corporations with professional counsel not those of private citizens of meager and insufficient funds to defend the Constitution of the United States.

Notice of Appeal to the United States Supreme Court is appended here as pages 6 and 7.

Hopefully timely funds will become available for both the required printing of this appeal and the filing fee required by the Court's Rules.

The Question is Substantial

The question is substantial in that it carefully documents at several levels of jurisdiction in the United States and the State of New York the lack of support for the Constitution as mandated by Art. VI Sect. 3 by members Judiciary and Administration People alike by giving preference over it by subserviant law such as State Constitution and local ordinances. It seeks to establish clearly for this nation that the mandate of its people as expressed by them in the Constitition may not be set aside or constructively avoided such that any one of them may be deprived of a right guaranteed by that Constitution to them.

It is submitted that both the District Court erring as it did and the Court of Appeals erring as it did in their respective dismissals has deprived Petitioner of his right to a jury trial thereby contributing to the destruction of the Constitution of the United States as it protects the rights retained by its citizens.

Further this petition coming as it does by the authority of the Constitution itself demands that the Constitution be upheld and the dismissals reversed.

Respectfully submitted,

JAMES L. PICKERING
James L. Pickering
Petitioner Pro Se

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Notice of Appeal to
United States Supreme Court

UNITED STATES COURT OF APPEALS
For the Second Circuit

JAMES L. PICKERING
Hand Road, Chaffee, New York 14030
Petitioner

v.

CITY OF BUFFALO
65 Niagara Square
Buffalo, New York 14202 Respondent

Please take notice that the above named Petitioner / Appellant hereby appeals to the United States Supreme Court from the informal opinion affirming the judgement of the District Court and filed in the clerk's office of the Second Circuit Court of Appeals on Jan. 20, 1981 and in the District Court on 18 Feb. 1981, the same being treated as an order of the District Court in the above named action bearing the District Court Docket Number CIV-78-164 and Court of Appeals Docket Number 80-7768 and from each and every part thereof.

This Appeal is taken to the Supreme Court of the United States by Authority of Art. I Ammendments to Constitution of the United States.

JAMES L. PICKERING
James L. Pickering, Pro Se.

2 18 81

Receipt for Certified Mail

P27 3692584

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

SENT TO
U.S. Court
STREET AND NO.
Foley Square
P.O. STATE AND ZIP CODE
N.Y.C. N.Y. 10007

POSTAGE	$ .15
CERTIFIED FEE	.80
SPECIAL DELIVERY	¢
RESTRICTED DELIVERY	¢
SHOW TO WHOM AND DATE DELIVERED	.45 ¢
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY	¢
SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES	$ 1.40
POSTMARK OR DATE	CHARLEE, NY FEB 20 1981

CONSULT POSTMASTER FOR FEES
OPTIONAL SERVICES
RETURN RECEIPT SERVICE

PS Form 3800, Apr. 1976

P27 3692585

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

SENT TO
H.C. Vaccaro
STREET AND NO.
City Hall
P.O. STATE AND ZIP CODE
Buffalo NY 14202

POSTAGE	$ .15
CERTIFIED FEE	.80 ¢
SPECIAL DELIVERY	¢
RESTRICTED DELIVERY	¢
SHOW TO WHOM AND DATE DELIVERED	.45 ¢
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY	¢
SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES	$ 1.40
POSTMARK OR DATE	CHARLEE, NY FEB 20 1981

CONSULT POSTMASTER FOR FEES
OPTIONAL SERVICES
RETURN RECEIPT SERVICE

PS Form 3800, Apr. 1976

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

United States Court of Appeals
Second Circuit

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York on the twentieth day of January, One Thousand Nine Hundred and Eighty-One.

Present:

HONORABLE WALTER R. MANSFIELD

HONORABLE JON O. NEWMAN

Circuit Judges

HONORABLE ROBERT L. CARTER

District Judge

JAMES L. PICKERING

against

CITY OF BUFFALO

Dkt. No. 80-7768

James L. Pickering appeals pro se from a judgement of the District Court for the Western District of New York entered by Judge John T. Elfvin on August 21, 1980, confirming his earlier direction of a verdict in favor of respondent at the close of Pickering's pro se complaint, construed liberally in Pickering's favor, Haines V. Kerner, 404 U.S. 519, 520 (1972), among other things claimed under 28 U.S.C. 1983 and 1985 (3) that he had been damaged by respondent's numerous due process violations in the conduct of a Buffalo City Court trial which resulted in condemnation and demolition of his Buffalo property and in denying him adequate medical treatment while he was imprisoned in lieu of posting bail for failure to appear in the same housing case.

Pickering's principal contention on this appeal is that the district court erred in not letting the case go to the jury for decision. In order to decide this issue, which depends on whether the facts and inferences weigh so decisively in favor of one party that a reasonable person could not arrive at a contrary verdict, Gerhardt v. General Motors Corp., 581 F. 2d 7, 14 (2nd Cir. 1978), we would normally require a trial transcript for review, Epoch Producing Corp. v. Killiam Shows Inc., 522 F. 2d, 737, 742-43 (2nd Cir. 1975), which Pickering has not supplied as required by F.R.A.P. 10(b). Dismissal of the appeal for non-compliance with this requirements is permissable, see Savard v. Marine Contracting Inc., 471 F. 2d 536, 543 (2nd Cir. 1972), cert. denied, 412 U.S. 943 (1973). However, based on our review of such records and briefs as are available, see United States v. One Motor Yacht Named Mercuty, 527 F. 2d 1112, 1113 (1st Cir. 1975), we are satisfied that the appeal is meritless and that the district court's judgement must be affirmed for failure to state a claim entitling Pickering to relief. Pickering's argument, based on Art. i, 10 of the 1938 New York State Constitution, that he was entitled to bar condemnation of his property, must be rejected for the reason that 10 was repealed by popular referendum in 1962, and under the

Constitution of the City of Buffalo acted within the state's police power in enacting a Housing Code and judicially enforcing it through condemnation proceedings. See Penn Central Transportation Co. v. New York City, 438 U.S. 104, 125 (1978).

The judgement of the district court is affirmed.

Walter R. Mansfield, U.S.C.J.
Jon O. Newman, U.S.C.J.
Robert L. Carter, U.S.D.J.

JUDGEMENT ON DECISION BY THE COURT

United States District Court
for the
WESTERN DISTRICT OF NEW YORK

Civil Action File No. 78-164E

James L. Pickering
vs.
The City of Buffalo

This action came on for trial (hearing) before the Court, Honorable John T. Elfvin, United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered.

It is Ordered and Adjudged that Plaintiff's suit is dismissed for failure to prove damages to a level that a jury could determine on same basis other than pure speculation.

Dated at Buffalo, New York this 21st day of August, 1980.

/ s / John T. Elfvin, U.S.D.J.

IDENTIFIED EXHIBIT LIST 78-164

Exhibit Number	For Ident.	Description
P	1	Volume 92, C.L.S. - N.Y. State U.S. Const. & N.Y. State Const.
P	2	U.S. Tax Court, Memo No. 1978-427 Filed Oct. 26-1978
P	3	Petitioners 1973 Income Tax File
P	4	Joint Exh. 5E - U.S.T.C. - 6760-75 Def. Exh. F-C.C.O.B. - 79-0118 Deed Dated 7-1-25
P	5	P.E. 20 U.S.T.C. - 6760 - 75 Erie County Surrogate App. Rept. 6 / DEC / 62
P	6	P.E. - 21, U.S.T.C. - 6760 - 75 Def. Exh. G-C.C.O.B. - 79-0118 (Will of Maryanna Smietanna)
P	7	J.T. 7G. U.S.T.C. - 6760-75 Quit Claim Deed Def. Exh. E. C.C.O.B. 79-0118 9 / 27 / 67
P	8	U.S. Dept. Labor - C.P.I. Charts Etc. Raw Data 1967 Thru 1979
P	9	P-file of 1974 Income Tax Inclusive U.S.T.C. 6142-78
P	10	P-File Docket No. 5B6384 City Court of Buffalo
P	11	U.S.T.C.-6760-75 P.E. 27 Docket No. 5B6384 C.C.O.B. Transcript
P	12	U.S. Marshal Svce. & Process Receipt & Return

Identified Exhibit List

P	13	Notice of Claim & Reg. Mail Receipt of Process - Same No. 44
P	14	Defendant's File 79-0118 City Court of Buffalo.
P	15	P-Copy Legislative Manual State of N.Y. 1962-3 C.C.O.B. 79-0118 Def. No. H
P	16	Charter-City of Buffalo (1974)
P	17	Buffalo Housing & Property Code 1969
P	18	C.L.S. Vol. 16 - G.M.L. New York Statutes
P	19	P-File on E.-24934 N.Y. Supreme Court.
P	20	Transcript C.C.O.B. 79-0118
P	21	Vol. 1 U.S.T.C. 6760-75 Transcript
P	22	Vol. II U.S.T.C. 6760-75 Transcript
P	23	P-File Containing Transcript 5A4560 (C.C.O.B.)

Judges List of Exclusions

Out

1, 2, 3, 4, 5, 6, 7,
8, 9, 12, 13, 15,
16, 17, 18, 19, 21,
22, 23, ~~24~~

possible

14,
pts 6, 10, 11, 20,
24